

Implied Warranties on Used Cars

Every used car sold by a dealer in the State of Washington for personal (not business) use has an “implied warranty of merchantability” under RCW 62A.2-314. This means that the dealer promises the used car will be fit for ordinary driving purposes, reasonably safe, without major defects, and of the average quality of similar cars which are generally available for sale in the same price range.

A car can be sold without the implied warranty of merchantability (“as is”), if the consumer waives or gives up, the warranty. Courts have ruled that the implied warranty is legally waived only if: 1) the consumer explicitly negotiates and agrees to the fact that the car does not have an implied warranty, and 2) the dealer gives the consumer a statement of the particular characteristics or parts of the car which are not being warranted.

When the vehicle was purchased, if there was a “Buyer’s Guide” sticker in the window which was marked “As-Is”, this alone is not sufficient to waive the implied warranty of merchantability. To waive the implied warranty on a used car, the above two requirements must have been met.

A dealer may believe the implied warranty was waived because the buyer signed a form giving up that right, or because the contract contained a clause which waived the warranty. However, unless the waiver was specifically negotiated with the customer, as described above, the waiver is not legally valid.

Also, if the consumer buys an extended service warranty contract within 90 days of buying the used car, by law, the implied warranty of merchantability cannot be waived under any circumstances.

As mentioned earlier, a used car must be reasonably fit for ordinary driving for a reasonable period of time. If the buyer has major problems with the vehicle, the consumer can request that the dealer fix the problem or refund the purchase price of the car. If the dealer refuses, that may be a violation of the consumer’s implied warranty of merchantability.

In these cases, the consumer can first file a complaint with the Attorney General’s Office or the Better Business Bureau. However, if that fails to resolve the problem, the consumer must file a lawsuit to enforce the implied warranty. This can be done without a lawyer in Small Claims Court, if the amount involved is less than \$2,500. Otherwise, it will be necessary to file a legal action in District or Superior Court, which usually requires hiring a lawyer. Keep in mind that Small Claims and District Courts cannot order the seller to perform repairs, but can only require the payment of money to cover damages.

Used cars also have another implied warranty under state law, called “Warranty of Fitness for a Particular Purpose” (RCW 62A.2-315). This provides that when the seller knows the vehicle is going to be used for a particular purpose, such as racing or towing a trailer, and the buyer is relying on the seller’s expertise to provide a suitable vehicle, a warranty is created that the item will actually be fit for that purpose. Again to enforce this type of warranty, it’s necessary to go to court.